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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/689,225	10/10/2000	James Agutter	4315 P	7116

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EXAMINER

NGUYEN, THOMAS T -

ART UNIT	PAPER NUMBER
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2174

DATE MAILED: 01/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicati n N .

09/689,225

Applicant(s)

AGUTTER ET AL.

Examiner

Thomas T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 24 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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FINAL OFFICE ACTION (paper #8)

***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

*Claims 1-2,4-5,7 are rejected under 35 U.S.C. 102(b) as being anticipated by Perel US patent 5,769,082.*

As per claim 1: Perel discloses a device for data representation as follows:

a graphical element comprising a first object, the first object having a designated frame and the first object being variably filled to indicate a first measured value and the designated frame designating an expected value of said first measured value (abstract, summary, cols.1-2 and Figs.7a-b, col.7 lines 19-35).

Regarding claims 2, 9, in addition to what is recited in claim 1, Perel discloses the one or more object is associated/ mapping with a cardiovascular function. For example, Perel discloses “*FIG. 7a depicts the change in the downslope of the four minimal systolic values during the procedure. The exaggerated volume responsiveness at points 1-4 and 13 can be clearly seen while points 7, 8, 10, 11 and 12 are characterized by a lack of change in the systolic blood pressure during the respiratory maneuver of the present invention, thereby denoting a non-volume responsive state and indicating to a skilled person that a blood*

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*transfusion would probably not be of too much use, while cardiotonic agents may improve cardiac function, if so desired*” (col.7 lines 19-28).

Regarding claim 4, in addition to what is recited in claim 1, Perel’s first object is associated with a numeric value (Figs. 7a-b).

Regarding claim 5, in addition to what is recited in claim 1, Perel displays a second object frame placed proximate to the first object frame and wherein the second object frame indicates an expected value of a second measured value (Figs. 7a-b).

Regarding claim 7, in addition to what is recited in claim 5, Perel discloses a sloped region positioned between said first object and said second object, “*FIG. 7b depicts the change in the upslope, i.e., the maximal systolic values during the RSVT, during the procedure. Points 10-12 are characterized by steep upslopes and flat downslopes*”, (col.7 lines 29-31).

Regarding claims 8,10, in addition to what is recited in claim 1, Perel’s first object is comprising a reference grid about said first object frame, and the first object is provided with a visual feature selected from the group consisting of texture, color, shading (Figs. 7a-b).

Regarding claim 11, in addition to what is recited in claim 1, Perel’s first object is variably filled based on a continuously sampled value. For example, Perel’s Fig.7a shows the first object is variably filled based on a continuously sampled value (% decrease in Systolic BP),

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and Perel's Fig.7b shows the first object is variably filled based on a continuously sampled value (% increase in Systolic BP).

***Claim Rejections - 35 USC § 103***

*Claims 3, 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perel US patent 5,769,082 in view of Gibson US patent 5,812,688*

Regarding claim 3, in addition to what is recited in claim 1, Perel fails to disclose first object has a cylindrical shape. On the other hand, it was known in the art that displayed graphic objects are associated with different shape, motion, position, color. For example, Gibson discloses "visual characteristics of the visual image, such as size, location, texture, density and color, and dynamic changes or adjustment to any one of these parameters causes a corresponding change in the correlated parameter" (summary, col.2 lines 28-31), and "The characteristics of the visual images, such as shape, size, spatial location, color, density and texture are correlated "(col.3 lines 15-18, Figs.11a-c). Therefore, it would have been obvious to one with ordinary skills in the art at the time the invention was made to use Gibson's teaching of image's cylindrical shape with Perel's system to producing data and displaying graphical objects in GUI environment which can provide the medical practitioner a more accurateness/ visualization method of measuring, examining the graphical information.

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Regarding claim 6, in addition to what is recited in claim 5, Perel discloses a second object associated with the second object frame (Figs.7-b).

### **Response to Applicant Remarks**

Applicant's arguments have been considered but are not deemed to be persuasive to put the case in condition for allowance. The examiner's response to Applicant's arguments are as follows:

Applicant's argument (page 5 paragraph 5 lines 4-6) "*invention includes a graphical element that can be filled to a variable degree based on an actual measured value and wherein the object frame of applicant's invention is based on an expected value*". This argument is not persuasive because Perel's system clearly discloses each of the *graphical elements that can be filled to a variable degree based on an actual measured value and wherein the object frame is according to (and / or based) on an expected value* "FIG. 7b depicts the change in the upslope, i.e., the maximal systolic values during the RSVT, during the procedure. Points 10-12 are characterized by steep upslopes and flat downslopes from which a skilled person can take that the filling pressures are high and that possibly a significant reduction in cardiac contractility (heart failure) has occurred"(Figs.7a-b and col.7 ).

Dependent claims 2-11 are rejected at least for a reason of their dependency and they contain features that are described and/ or suggested in Perel's system as rejected above.

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## Conclusion

Applicant's amendment necessitated the new ground of rejection presented in this office action. Question that concerning this communication should be directed to the Patent Examiner **Thomas T. Nguyen**, whose telephone number is (703) 308-7240 (Monday to Friday 09:30 - 6:00 ET) or *Kristine Kincaid* Supervisory Patent Examiner (703) 308-0640.

Other inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900 and Official-Fax number (703) 828-9306.

Thomas T. Nguyen

January 12, 2004

*Kristine Kincaid*  
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